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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054

In the Matter of	)	
	)	
Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers	)	CC Docket No. 95-185

COMMENTS

Alaska 3 Cellular Corporation d/b/a CellularOne ("CellularOne"), by its attorney, hereby submits comments in response to the Commission's January 11, 1996 Notice of Proposed Rulemaking ("NPRM") in the captioned docket. CellularOne believes it will be useful to the Commission's analysis to have real world examples of problems facing Commercial Mobile Radio Service ("CMRS"). Attached for inclusion into the record of this docket is a copy of CellularOne's Request For Declaratory Ruling [hereinafter "Request"] which is pending before the Commission. In its Request, CellularOne asked the Commission to declare that certain regulations of a state commission (the Alaska Public Utilities Commission) are, such as call routing requirements applied to wireless services providers like CellularOne. The Request provides a detailed picture of how state regulations frustrate the national goal of establishing a seamless and economically efficient network for wireless services.[1]

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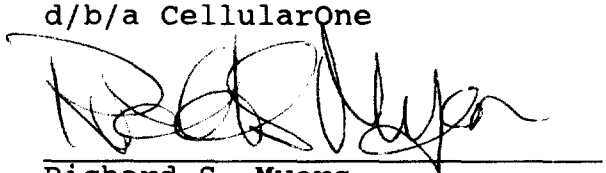
[1] CellularOne's case, which involves the wide-area calling area it wishes to establish with a single NXX code, is the type of case described in paragraph 112 of the NPRM, arising from the fact that "Service areas defined as 'local' in wireless providers' rate structure do not coincide with LEC 'exchanges' defined by Section 221(b) as subject to state authority, and often cross state lines."

Given the potential for a morass of state regulations to impede development of a national wireless infrastructure, CellularOne believes that is vitally important for the Commission to opt for the alternative described in paragraph 110 of the NPRM. The Commission should establish specific and comprehensive parameters that are mandatory for state commissions. The more leeway the Commission grants state authorities in interpreting and applying federal interconnection guidelines, the more disputes that undoubtedly will occur, and the emerging national wireless telecommunications infrastructure will suffer.

The Telecommunications Act of 1996 ["the 1996 Act"] bolsters this Commission's ability to adopt strong, mandatory guidelines for the interconnection of CMRS providers with local exchange carriers. In particular, Sections 251 through 253 of the 1996 Act make it abundantly clear that the Commission has occupied the jurisdictional field when it comes to such interconnection, regardless whether "intrastate" communications are involved. The Commission should fully exercise its preemption authority and eliminate the kind of state-imposed interconnection restrictions highlighted in CellularOne's case. Such restrictions only impede the growth of cost-efficient, wide area wireless systems.

Respectfully submitted,

ALASKA 3 CELLULAR CORPORATION
d/b/a CellularOne

By: 

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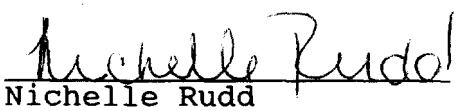

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FILE COPY

Before The
Federal Communications Commission
Washington, D.C. 20554

In the matter of	)	
	)	
Motion For Declaratory Ruling	)	File No.
Concerning Preemption Of Alaska	)	
Call Routing And Interexchange	)	
Certification Regulations As	)	
Applied To Cellular Carriers	)	

MOTION FOR DECLARATORY RULING

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SUMMARY

By the instant Motion, Alaska-3 Cellular LLC dba CellularOne ("CellularOne") requests the FCC to declare that federal law and regulations governing the interconnection of cellular radio carriers with local exchange companies ("LECs") preempt certain regulations of the state of Alaska with respect to intrastate interexchange calls from landline callers to cellular subscribers. Specifically, CellularOne requests the FCC to declare such state regulations to be preempted to the extent they require: (I) cellular carriers to become certificated as interexchange carriers; and (II) LECs to route calls from a landline caller bound to cellular mobile subscribers through the presubscribed interexchange carrier of the landline caller.

The FCC has jurisdiction to preempt Alaska's state regulations. The Communications Act of 1934 (the "Act") mandates the FCC to establish a rapid and efficient system of interstate communications with adequate facilities at reasonable charges. Titles II and III of the Act give the FCC jurisdiction to regulate common carriers and the licensing of radio stations, respectively. In addition, the FCC has jurisdiction over the interconnection of cellular carriers with LECs, including plenary jurisdiction over the physical plant for interconnection, the cellular carrier's use of NXX codes, and the duty of carriers to negotiate interconnection in good faith.

Federal preemption authority may be exercised when state regulation frustrates the purpose of federal law. In the instant case, application of Alaska's regulations frustrate the FCC's mandate to establish a rapid and efficient cellular service. If Alaska's regulations are applied to CellularOne, landline customers will have to dial ten, rather than seven digits to reach CellularOne's customers. In addition, those landline callers will be charged a toll for placing the calls. Alaska's regulations thus frustrate the FCC's intent that interconnection be accomplished at the lowest charge to the consumers. Alaska's regulations should, therefore, be preempted.

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MOTION FOR DECLARATORY RULING

I. Introduction

1. Alaska-3 Cellular LLC d/b/a CellularOne, by its attorney and pursuant to Section 1.2 of the Commission's Rules, 47 C.F.R. §1.2, hereby moves the Commission to declare that particular call routing and interexchange carrier certification regulations of the State of Alaska as applied to cellular radio licensees are preempted by federal laws and regulations governing interconnection of cellular systems.

II. Statement of Facts[1]

2. Alaska-3 Cellular Corporation d/b/a CellularOne ("CellularOne") holds a Domestic Public Cellular Radio Telecommunications Service [hereinafter "cellular radio"] authorization issued by the Federal Communications Commission ("FCC") to provide cellular radio service on frequency Block A to

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[1] This section, "Statement of Facts," was written in conjunction with PTI Communications ("PTIC"). CellularOne understands that this Statement of Facts section includes PTIC's position in the matter and that PTIC may submit additional comments as it deems appropriate. A copy of this Motion is being sent to PTIC.

customers in the Alaska-3 ("AK-3") Rural Service Area ("RSA"). CellularOne is deemed to be a Commercial Mobile Radio Service ("CMRS") provider as defined by Sections 3(n) and 332 of the Communications Act of 1934, as amended, and Sections 20.3 and 20.9(7) of the FCC's rules.

3. The AK-3 RSA includes the cities of Sitka, Juneau and Ketchikan, Alaska. CellularOne plans to construct a total of fourteen (14) cell sites and three (3) Mobile Telephone Switching Offices (MTSOs). One MTSO will be constructed in each of the three cities of Juneau, Sitka and Ketchikan. A number of cellular transmitter cell sites will be associated with each MTSO. Using mobile cellular telephones, CellularOne customers will be able to send and receive communications over signals picked up and transmitted by the cell sites, which will communicate with the MTSOs. The MTSOs, in turn, will be interconnected with the landline facilities of a local exchange carrier ("LEC").

4. Telephone Utilities of Alaska, Inc. and Telephone Utilities of Northland, Inc. both do business as PTI Communications (collectively, "PTIC"). PTIC is the LEC in Sitka and Juneau. It is also an affiliate of the cellular carrier operating on frequency Block B which is in competition with CellularOne. PTIC (including its affiliates) is not an interexchange carrier ("IXC") in the state of Alaska.

5. CellularOne has designed its cellular radio system to have a leased line connection between its Sitka and Juneau MTSOs, and a leased line connection between its Juneau and Ketchikan MTSOs

(see Exhibit 1). A local trunk group, such as a T-1 link, would interconnect the CellularOne's MTSO in Sitka with PTIC's facilities in Sitka. A similar link would interconnect CellularOne's MTSO in Juneau with PTIC's facilities in Juneau. CellularOne has acquired the 723 NXX code for the Juneau area. CellularOne would like to assign seven-digit numbers that use the same 723 prefix to all of its customers, regardless of their location in the Alaska 3 RSA. PTIC does not dispute CellularOne's right, if it so desires, to assign numbers in this manner.

6. PTIC has offered CellularOne interconnection with the landline network. PTIC and CellularOne executed an interim agreement for CellularOne's interconnection in Juneau and it appears that a definitive agreement is imminent. There is no disagreement between the parties over the availability of Type 2 interconnection which is the form of interconnection desired by CellularOne from PTIC in Sitka. However, the parties disagree over how the landline network should handle traffic that originates from a landline customer in one NXX destined for a cellular customer in another NXX that is situated outside the local, toll-free calling area of the first NXX.

7. Landline customers of PTIC and potentially CellularOne cellular customers (see No. 4 above) in Juneau are assigned local numbers with a Juneau NXX. Landline customers of PTIC in Sitka are assigned local numbers with the 747 NXX. The two cities are approximately 100 air miles apart and separated by the Chatham Strait (see the diagram attached as Exhibit 2 hereto.) Landline

traffic between the two local calling areas is intrastate interexchange traffic. PTIC believes that traffic from a landline customer in one local calling area destined for a customer (including cellular) in another local calling area is interexchange traffic. Pursuant to equal access requirements of the Alaska Public Utilities Commission ("APUC"), PTIC believes that a LEC must deliver a landline customer's intrastate interexchange traffic, including traffic bound for a cellular customer, to the appropriate IXC to which the customer presubscribes.

8. Landline calls from persons with the Sitka 747 NXX to persons with a Juneau NXX including 723 require ten digit dialing and are subject to a toll charge. Only if the two areas were in the same local calling area (i.e., they had extended area service or "EAS") would the call not be ten digit dialed call and subject to a toll.

9. CellularOne believes that its assignment of 723 NXX numbers to all of its cellular customers in Alaska 3 RSA, regardless of their location, should allow a landline PTIC customer in Sitka to place a call to one of CellularOne's mobile customers with a Juneau NXX without incurring toll charges. CellularOne believes the PTIC switch in Sitka should recognize the landline originated Sitka call to a mobile 723 NXX as a local call and route that call to CellularOne rather than the landline customer's presubscribed IXC.

10. PTIC disagrees with CellularOne on the point of whether or not such a call should be routed to CellularOne or the

presubscribed IXC. PTIC contends that the routing of the call from Sitka to Juneau, regardless of the fact that it is possible to intercept and divert such a call to CellularOne, is nonetheless an interexchange call and must be routed to the presubscribed IXC. PTIC believes the requirement that PTIC initially route the call to the presubscribed IXC is unaffected by whether a toll is paid by the originating party, the receiving party or a cellular carrier such as CellularOne which conceivably might be willing to pay the toll.

11. PTIC has questioned whether or not CellularOne's plan to lease a T-1 to carry traffic between Sitka and Juneau subjects CellularOne to APUC jurisdiction such that CellularOne must apply for APUC certification as an IXC. PTIC believes that CellularOne must obtain APUC certification as an IXC in order to carry traffic originating from a landline customer in one NXX destined for a customer with another NXX outside of the local calling area of the first NXX. Even if CellularOne becomes a certificated intrastate IXC carrier, or if the certification process is deemed inapplicable, PTIC believes that it would continue to be obliged to route such traffic to the presubscribed IXC which may or may not be CellularOne.

12. CellularOne believes that APUC certification is unnecessary because, inter alia, FCC regulations governing CMRS providers, including Section 20.11 of the FCC's rules which requires LECs to provide the type of interconnection reasonably requested by a CMRS provider, preempts state regulation in this

area.

13. PTIC believes that the issue of APUC certification of CellularOne as an IXC is not to be overlooked, but that the question of whether the FCC rules preempt state certification requirements is not relevant to a resolution of the disagreement between the parties. PTIC's concern is that traffic which originates from a landline customer in one NXX destined for a foreign NXX (i.e., an NXX outside of the local calling area of the first NXX) must be routed to the landline customer's presubscribed IXC. PTIC believes that even if CellularOne were to become the presubscribed IXC, the call would be ten digits and not seven digits. Only if the route (Sitka NXX to Juneau NXX) were converted to EAS could the call be seven digits and routed somewhere other than to the presubscribed IXC.

14. CellularOne requested cooperation of PTIC in a presentation of facts to the FCC for an advisory opinion on the federal preemption question. PTIC agreed to cooperate even though it believes the question presented is irrelevant to a resolution of their disagreement. CellularOne believes that federal preemption includes preemption of state routing requirements applicable to presubscribed IXCs insofar as such requirements are purportedly applicable to a cellular carrier operating within its authorized RSA.

III. Argument

A. Introduction

15. CellularOne hereby requests the FCC to declare that

federal law governing the interconnection of cellular carriers preempts Alaska state regulations requiring: (a) CellularOne to be certificated as an interexchange carrier ("IXC") prior to obtaining the interconnection it requires for its seven digit wide area dialing plan;[2] and (b) PTIC to route calls from its landline customers to CellularOne's subscribers to the landline customer's presubscribed IXC rather than to CellularOne's MTSO.[3] As explained below, the FCC has jurisdiction to preempt the application of these Alaska regulations to cellular carriers. The FCC should exercise that preemption authority in this case.

B. The FCC Has Jurisdiction To Preempt The Alaska Regulations

17. The Communications Act of 1934 (the "Act") created the FCC "for the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States a rapid,

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[2] Alaska Statute 42.05.221(a) provides that a public utility may not operate without first having obtained from the APUC a certificate of public convenience and necessity. IXCs are required to be certified under 3 AAC 52.360(a) of the APUC's regulations. The APUC regulation at 3 AAC 52.340(36) includes radio common carriers in the definition of IXCs.

[3] The APUC regulation at 3 AAC 52.333(b) requires a local exchange telephone utility to presubscribe the access line or lines of each customer to the incumbent IXC until the local exchange telephone utility receives written authorization from the customer changing the presubscription to another certificated intrastate interexchange carrier. The APUC regulation at 3 AAC 52.334(b) provides that reassignment of a customer's access lines may be done by written or verbal authorization from the customer. APUC regulation 52.355(a)(1) provides that IXCs may build and operate facilities used in the provision of intrastate interexchange service in the NNX designations set out by order of the state commission for specified locations, including Juneau and Sitka.

efficient, nationwide and world-wide wire and radio communication service with adequate facilities at reasonable charges..." Communications Act of 1934, §1, 47 U.S.C.A. §151. Section 2(a) of the Act provides that the FCC's jurisdiction "shall apply to all interstate and foreign communication by wire." 47 U.S.C.A. §152(a). The FCC's jurisdiction over common carriers are described in Sections 201-205 of the Act, 47 U.S.C.A. §§201-205. Section 201(a) provides the FCC with express authority over "physical connections with other carriers." Section 201(b) requires that all "charges, practices, classifications, and regulations for and in connection with [interstate] communication service shall be just and reasonable." Section 202(a) declares it to be "unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services" of interstate communication. Sections 203 and 204 provide procedures for tariff filings by carriers and for FCC review of proposed tariffs.

18. The Act reserves some regulatory authority to the states. Section 2(b)(1) of the Act provides that nothing in the Act shall be construed to give the FCC jurisdiction "with respect to...charges, classifications, practices, services, facilities or regulations for or in connection with intrastate communication service." 47 U.S.C.A. §152(b)(1). Section 221(b) of the Act limits FCC jurisdiction with respect to "charges, classifications, practices, services, facilities or regulations for or in connection with...telephone exchange service" where "such matters

are subject to regulation by a State commission or by local governmental authority" even though "a portion of such exchange service constitutes interstate or foreign communications."

19. Title 3 of the Act, however, grants the FCC sole authority to license radio facilities. Section 301 of the Act provides that "[n]o person shall use or operate any apparatus for the transmission of energy or communications or signals by radio...except under and in accordance with this Act and with a license on that behalf granted under the provisions of the Act." 47 U.S.C.A. §301. Congress thus determined that overall management of the radio spectrum and the licensing of radio facilities are areas within the exclusive jurisdiction of the Federal government. NARUC v. FCC, 525 F.2d 630 (D.C. Cir. 1976), cert. denied, 425 U.S. 992 (1976).

20. The federal mandate to make a "rapid, efficient, nationwide" service "at reasonable charges" available to "the people of the United States" was cited by the FCC when it established the cellular communications service nearly fifteen years ago. Cellular Communications Systems, 86 F.C.C. 2d 469, 492 (1981). The FCC intended to serve the public interest "by implementing a nationwide high-capacity mobile communications service capable of providing both local and roaming mobile telephone users the ability to place and receive calls." Id. at 502. The FCC created a licensing system in which two cellular licensees would be authorized to

operate in Cellular Geographic Service Areas ("CGSAs").[4] The FCC intended to give cellular licensees wide latitude in meeting customer demand. Specifically, the FCC stated:

> We are establishing a regulatory structure under which a cellular system operator, once authorized, will have considerable freedom to adapt its system to growing or changing demand. Flexibility to adapt to change is inherent in the cellular concept and an approach requiring any more paperwork or prior approval than is absolutely essential might destroy that flexibility. Accordingly, once a cellular service area has been established, the system operator will be able to modify its system without substantial oversight, as long as it serves the same area. Thus, the key to our regulatory structure is the geographic service area of a cellular system.

Id. at 509. Given that the FCC established the service area boundaries for cellular licensees, it is axiomatic that the FCC have plenary jurisdiction over how the cellular licensee provides service within those federally defined boundaries, including the licensee's implementation of a seven-digit wide area dialing plan.

21. In establishing the cellular service, the FCC asserted the primacy of its jurisdiction over state jurisdiction. The FCC stated that "an essential objective has been for cellular service to be designed to achieve nationwide compatibility. In this regard, we expressly stated that a cellular subscriber traveling outside of his or her local service area should be able to communicate over a cellular system in another city." 86 FCC 2d at

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[4] For larger markets, the Commission adopted Standard Metropolitan Statistical Areas to define the outer boundaries of a licensee's CGSA. Cellular Communications Systems (Reconsideration Order), 89 FCC 2d 58 (1982). Other markets were defined by Rural Service Areas ("RSAs"). See The First Report and Order, Amendment of the Commission's Rules for Rural Cellular Service (Order), CC Docket No. 85-388, 51 Fed. Reg. 26895 (1986).

503. The FCC proceeded to make clear that Sections 2(b) and 221(b) of the Act, which reserved jurisdiction for some economic regulation to the states, were subject to the FCC's sole jurisdiction over radio licensing pursuant to Title III of the Act. Id., at 504. The FCC thus asserted federal primacy over the areas of technical standards and competitive market structure for the cellular service to assure that the scarce radio spectrum allocated for it was "used effectively and efficiently." Id., at 505.

22. With respect to interconnection of cellular carriers to the landline network, the FCC stated: "[a] cellular system operator is a common carrier and not merely a customer; interconnection arrangements should therefore be reasonably designed so as to minimize unnecessary duplication of switching facilities and the associated costs to the ultimate consumer." Id., at 496. Accordingly, the FCC indicated that all telephone companies were expected to furnish appropriate interconnection to cellular systems upon reasonable demand and on terms no less favorable than those offered to the cellular systems of affiliated entities. Id.

23. As the cellular service developed, interconnection between cellular carriers and LECs assumed an importance requiring federal intervention. In 1986, the FCC concluded that it had plenary jurisdiction, based on Sections 2(a) and 201 of the Act, over the physical plant used in the interconnection of cellular carriers. Cellular Interconnection Policy Statement, 2 FCC Rcd 2910, 2912 (1986)["Policy Statement"]. The FCC found that any state regulation with respect to the physical plant used in the

interconnection of cellular carriers "would substantially affect the development of interstate communications; without a nationwide policy governing the reasonable interconnection of cellular systems, many of those systems may be barred from the interstate public telephone network. A nationwide policy will also prevent increased costs and diminished signal quality among cellular systems..." Policy Statement, 2 FCC Rcd at 2912.

24. The FCC recognized that it was possible to divide the actual interstate and intrastate costs of cellular interconnection, and emphasized that its jurisdiction is limited to actual interstate costs of interconnection and ensuring that interconnection is provided for interstate service. However, the FCC recognized:

> [A]t some point, the intrastate component charges for physical interconnection, as well as of charges to cellular carriers, may be so high as to effectively preclude interconnection. This would "negate" the federal decision to preclude interconnection, thus warranting preemption of some aspects of particular intrastate charges....

Policy Statement, 2 FCC Rcd at 2912 [footnotes omitted]. In reviewing matters concerning the interconnection of cellular carriers with landline carriers, the FCC thus follows the principle that it will exercise its preemption authority whenever the state regulation "negates" purposes underlying the FCC's cellular decisions, even when the state regulation involves an intrastate matter over which the state possesses jurisdiction.

25. The FCC also concluded that it has plenary jurisdiction over the allocation of NXX codes. Id. It found the codes to be an

"indispensable part of the 'facilities and regulations for operating [the] through routes' of physical interconnection, as contemplated by Section 201." Id. The FCC recognized that the North American Numbering Plan ("NANP") established the codes as a "national resource" in the United States and Canada and ensured the equitable distribution of the codes without duplicative codes and numbers. The FCC concluded that "any state regulation of this national resource could substantially affect interstate communications by disrupting the uniformity of the NANP. It follows that the Commission may regulate the rights of cellular carriers to obtain and use NXX codes." Id. The Commission found that the interstate component of the costs of allocating the codes could be separated, and stated that it would regulate only that component, leaving rate regulation of intrastate components to the states. Id. Finally, citing Sections 2(a), 201 and 202 of the Act, the FCC preempted state regulation of the duty of carriers to negotiate interconnection arrangements "in good faith."

26. As reflected in the Policy Statement, the FCC's jurisdiction over cellular interconnection preempts state regulation of the physical plant used in such interconnection, the rights of cellular carriers to obtain and use NXX codes, and the duty of carriers to negotiate cellular interconnection in good faith. In accordance with Section 2(b) of the Act, the FCC's jurisdiction in cellular interconnection matters does not include regulation of charges associated to the intrastate portions of cellular interconnection and allocation of NXX codes. However, the

FCC may preempt even this type of intrastate regulation when it "negates" federal decisions. Id., 2912.

27. The principle that federal preemption authority may be exercised when state regulation frustrates the purpose of federal law is well established. In People Of State of California v. FCC, 567 F.2d 84 (D.C. Cir. 1977), the Court was faced with the issue of whether the FCC had jurisdiction to regulate Foreign Exchange and Common Control Switching Arrangement facilities that were used for both interstate and intrastate communications. The Court ruled that the FCC may regulate such facilities to the extent it proves technically and practically difficult to separate the two types of communications. 567 F. 2d at 86. The Court indicated that the physical location of the facilities was not determinative of whether they are interstate or intrastate for regulatory purposes. Rather, the key issue is the nature of the communications which pass through the facilities, not the physical location of the lines. The Court held that the facilities at issue were "an integral part of an interstate communications network" and that FCC jurisdiction, therefore, was present. Id. The Court reasoned that it was impractical to separate interstate foreign exchange service from intrastate foreign exchange service and assert jurisdiction only over the former. Requiring two redundant facilities would frustrate the FCC's responsibility "to make available, so far as possible to all the people of the United States, a rapid, efficient, Nationwide and world-wide wire and radio communications service with adequate facilities at reasonable

charges." Id.

28. FCC regulations must preempt any contrary regulations where the efficiency or safety of the national communications network is at stake. In North Carolina Util. Comm'r v. FCC, 552 F.2d 1036 (4th Cir.)("NCUCI"), cert denied, 434 U.S. 874 (1977), the 4th Circuit Court of Appeals ruled that the FCC had jurisdiction to preempt state regulation of the type of terminal equipment that could be interconnected with the local landline network. The Court stated:

> The aim of the Communications Act, after all, is not limited to achievement of a minimally efficient, nondangerous national network. Instead, Congress has declared its purpose to be the creation of "a rapid, efficient Nationwide, and world-wide wire and radio communications service with adequate facilities at reasonable charges."

Id., at 1046. Based on the fact that the terminal equipment was used for both intrastate and interstate communications, the Court found that the statutory scheme of the Act granted FCC jurisdiction to preempt conflicting state regulation regarding the interconnection of such equipment. Id.

29. Congress recently codified the FCC's plenary authority to regulate the interconnection of cellular carriers. When it adopted the Omnibus Budget Reconciliation Act of 1993 ("Budget Act"), it amended the Act to preempt state regulation of commercial mobile radio service ("CMRS") providers. See Budget Act, §6002(c)(3)(A). In particular, the Act was amended to: (1) define "mobile service" as a radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations

communicating among themselves;[5] (2) require common carriers to establish physical connections with commercial mobile radio services upon reasonable request pursuant to Section 201 of the Act;[6] and (3) prohibit States and local governments from regulating the entry of or the rates charged by any commercial mobile service, but not of other terms and conditions.[7] FCC regulations were adopted to codify these provisions of the Budget Act and extend them to the cellular service.[8]

30. When a landline caller in Sitka dials the number of a CellularOne subscriber, that call will be interstate communications if the CellularOne subscriber is in a city of another state (Seattle, Washington, for example). It would be impracticable to separate which such calls will be intrastate and interstate, and highly inefficient to establish two redundant systems. Instead, federal laws and policies are intended to have cellular systems form an integral part of the nation's interstate communications network. The FCC's plenary jurisdiction over the management of the radio spectrum in general, and the interconnection of cellular carriers in particular, provide the FCC with ample authority to preempt state regulations that frustrate the FCC's concept of cellular service. Given that FCC jurisdiction extends to physical plant for interconnection, NXX codes, and the good faith duty to

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[5] 47 U.S.C. §3(n).

[6] 47 U.S.C. §332(c)(1)(B).

[7] 47 U.S.C. §332(c)(3)(A).

[8] See 47 C.F.R. §§20.3, 20.9(7), 20.11.

negotiate interconnection, state regulations -- even those as dealing with intrastate communications -- should be preempted to the extent they frustrate the mandate of the Act.

C. Alaska's Regulations Frustrate Federal Law And Should Be Preempted

31. Alaska's regulations, to the extent they may be deemed to require cellular carriers to be certificated as interexchange carriers, and require the routing of calls bound for cellular subscribers through the caller's presubscribed interexchange carrier, frustrate federal purposes in establishing the cellular service. First, Alaska's regulations frustrate the FCC's mandate under the Act to make cellular communications a rapid and efficient service. Specifically, application of these state regulations will require landline callers in Sitka to dial ten digits, instead of seven, in order to communicate with CellularOne subscribers in Juneau. These state regulations frustrate the federal purpose of making service available at reasonable charges. If Alaska's call routing regulations are applied to calls from Sitka landline callers to CellularOne's Juneau's customers, these landline callers will be charged a toll for such calls. Such toll charges are not reasonable given that CellularOne can efficiently carry the traffic bound for its subscribers at no charge to the landline caller.

32. Application of Alaska's regulations also frustrates the FCC's intent of giving CellularOne the flexibility to develop the service in its RSA to meet customer demand and to use the scarce spectrum assigned to it "effectively and efficiently." Alaska's certification requirement will burden CellularOne with additional

paperwork and delay in connection with implementing its seven digit wide area dialing plan. Alaska's call routing requirement will require landline callers to dial more numbers to reach CellularOne's subscribers who may be roaming outside the Alaska 3 RSA in markets located in other states. Application of Alaska's certification and call routing regulations will, therefore, frustrate the FCC's purpose of allowing cellular licensees to meet customer demand and make effective and efficient use of scarce cellular radio spectrum.

33. Application of Alaska's regulations also frustrates the FCC's interconnection policies intended to make cellular service a rapid and efficient nationwide system and minimize costs to the consumer. First, Alaska's certification and call routing regulations will greatly inconvenience landline callers by requiring them to dial ten, rather than seven numbers. Second, these state regulations unnecessarily require such callers to pay a toll charge for doing so, thus maximizing rather than minimizing costs to consumers.

34. Application of Alaska call routing and interexchange carrier certification regulations to cellular carriers also conflicts with Congress' recent mandate to preempt state regulation of the entry and rates of CMRS providers like CellularOne. The Alaska regulations effectively prohibit CellularOne's entry into the wide area service market defined by its federally licensed RSA boundaries. The rate plan contemplated by CellularOne's wide area dialing service includes no charge to a landline caller for placing